

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:

RAY DANIEL HESTER, JR

IVY SPELL HESTER

DEBTORS

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CASE NO. 09-82170

CHAPTER 7

**MOTION FOR RELIEF FROM AUTOMATIC STAY OR IN THE
ALTERNATIVE ADEQUATE PROTECTION
{No Protest Motion Pursuant to 11 U.S.C. § 362}**

COMES NOW BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing LP (hereinafter “Movant”), a secured creditor in the above-captioned case, by and through counsel, Brock & Scott, PLLC, and moves this Court to enter an order granting its request for relief from the automatic stay imposed by 11 U.S.C. § 362(a) on the following grounds:

1. On December 4, 2009, the Debtors, Ray Daniel Hester, Jr and Ivy Spell Hester, filed a petition with the Bankruptcy Court for the Middle District of North Carolina under Chapter 7 of Title 11 of the United States Code. John Northen of Chapel Hill, North Carolina was appointed Trustee.

2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 1334 and 157.

3. The Debtors hold title to the real property (hereinafter “Collateral”) described in that Deed of Trust recorded in the Durham County Register of Deeds in Book 4330 at Page 750 and recorded on March 31, 2004 (hereinafter “Deed of Trust”) with an address of 10 Blazing Star Lane, Bahama, North Carolina 27503. A copy of the Deed of Trust is attached hereto and is incorporated herein as Exhibit “A”.

4. Movant holds a Promissory Note secured by the Deed of Trust from the Debtors in the original principal amount of \$152,100.00 and dated March 31, 2004 (hereinafter “Note”). A copy of the Note is attached hereto and incorporated herein as Exhibit “B”.

5. The Debtors have scheduled the value of the Collateral at \$198,859.00.

6. Upon information and belief, the approximate payoff due and owing to Movant as of December 9, 2009 is \$148,737.44.

7. Upon information and belief, SunTrust is the holder of a second lien deed of trust in the amount of \$27,077.00 on the subject property.

8. As a result of the averments in paragraphs “5” through “7”, little equity exists in the subject property.

9. The Debtors have defaulted in the mortgage payments to be made pursuant to the terms of the Note. Upon information and belief, the amount of default, exclusive of fees and costs, is as follows:

2	payments @	\$	820.92	\$	1,641.84
	(11/09 - 12/09)				
	Total Delinquency			\$	1,641.84

10. As a result, Movant lacks adequate protection of its interest in the Collateral. By virtue of such lack of protection, good cause exists to lift the automatic stay imposed hereunder. Otherwise, Movant will suffer irreparable harm with respect to Movant's interest in the Collateral.

WHEREFORE, Movant prays the Court as follows:

1. Modify the Automatic Stay of Section 362(a) of the Bankruptcy Code to permit Movant to enforce its security interest in the Collateral.

2. Modify Rule 4001(a)(3) of the Bankruptcy Code so that it is not applicable in this case and so Movant may immediately enforce and implement this order granting relief from the automatic stay.

3. As an alternative to the relief prayed for above, grant adequate protection to Movant for its interest in the Collateral.

4. Grant Movant reasonable costs and attorney fees incurred in connection with this proceeding; and,

5. Grant Movant such other and further relief as the Court deems just and proper.

This 18th day of December, 2009.

Brock and Scott, PLLC

/s/ Sean M. Corcoran

Sean M. Corcoran

Attorney for Movant

Brock & Scott, PLLC

5121 Parkway Plaza Drive, Suite 300

Charlotte, NC 28217

(704) 369-0676

Bar No.: 33387

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that he/she is over eighteen (18) years of age and that the MOTION FOR RELIEF FROM AUTOMATIC STAY in the above captioned case were this day served upon the below named persons by mailing, postage prepaid, first class mail a copy of such instrument to each person(s), parties, and/or counsel at the addresses shown below:

Ray Daniel Hester, Jr
Ivy Spell Hester
10 Blazing Star Lane
Bahama, NC 27503

John T Orcutt
Electronic Delivery Only

John Northen
Post Office Box 2208
Chapel Hill, NC 27514

This 18th day of December, 2009.

Brock and Scott, PLLC

/s/ Sean M. Corcoran
Sean M. Corcoran
Attorney for Movant
Brock & Scott, PLLC
5121 Parkway Plaza Drive, Suite 300
Charlotte, NC 28217
(704) 369-0676
Bar No.: 33387